(2) 961805 JUN 16 1997

No. ~~96-1005~~

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In The

Supreme Court of the United States

October Term, 1996

PROMISE DOE, JANE ROE, KIMBERLY C., RUSS C., and SMALL WORLD MINISTRIES, INC.,

Petitioners,

-v.-

DON SUNDQUIST, Governor of the State of Tennessee, in his official capacity, CHARLES W. BURSON, Attorney General of the State of Tennessee, in his official capacity, and LINDA RUDOLPH, in her official capacity as the Commissioner of the Department of Human Services for the State of Tennessee,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF OF *AMICI CURIAE* Teresa Evetts Horton, *et al.* and Robert D. Tuke, *et al.* IN OPPOSITION TO PETITION

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This brief is submitted on behalf of the following *amici curiae*, who are described on page 1:

Affected Amici

Birth Parents

Teresa Evetts Horton
Nancy Lynn Acree
Janice Akers
Donna Asta
Kathleen F. Baroni
Bonnie Blackwell
Debbie Collins
Diane Edwards
Kay Garrett
Cheryl B. Hagler
Laura C. Ingram
Rosemary James
Sandra Joy Long
Vickie Mills
Debra Browner Minga
Elaine G. Sabra
Betty Sarvis

Adoptive Parents

Catherine Adams
Daryl Adams
Gordon Adkins
Jan Adkins

Robert Adkisson
Bobby W. Atkins
Diana Gail Atkins
J. Camille Beckwith
Thomas D. Beckwith
Bonnie Dudley
Marie Hill
Carol Lightfoot
Onecia Longley
Frances Mattson
Larry Mattson
Thomas Swain
James Thompson
Kathleen Thompson
Charlotte West

Adoptees

Phillip R. Brackett
Brenda Kaye Brewster
Allison Brown
Karen Cardosi
Charlisa L. Cato
Mary Elizabeth Clark
Amy Crawford
Kristi Dodson
Mary Malissa Thompson Doerr
Debra Duckett
Sara Elmore
Kay Gardner
Valerie Goodman

Sherry Griffith
Rachel Marie Lilly
Derek Lind
Sharon Mauk
Matthew McMurray
Deborah Sharon Norton
Regina Pearham
Tracey Peck
Wanda Roberts
Brent Rogers
Annamarie Ross
Julee Spangler
Frank Splann, III
David Michael Swain
Leslie Swift
Jody Tegethoff
Kari Tegethoff
Holly West
Janette White
Paige Yank

Legislative Amici

Jim Holcomb
Joe Fowlkes
Caprice East
Robert D. Tuke

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OTHER AUTHORITIES

Alan Guttmacher Institute, *Abortion Factbook, 1992 Edition* 18

Alaska Bureau of Vital Statistics, 1994 Annual Report 18

Flango and Flango (National Center for Court Statistics), "How Many Children Were Adopted in 1992," 74 CHILD WELFARE 1018 (1995) 18

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INTEREST OF AMICI CURIAE

This brief is filed on behalf of the various *amici curiae* who were allowed to participate in the lower courts. These *amici* fall into two groups.

One group of *amici* are 69 persons who desire to exercise their rights under the Tennessee statute. They are referred to herein as the "Affected Amici" and are described in more detail below.

The other *amici* are persons involved with the drafting and passage of the Tennessee statute. Jim Holcomb and Joe Fowlkes were the sponsors in the Tennessee Senate and Tennessee House respectively. Caprice East and Robert D. Tuke were members of the Commission to Study the Adoption Laws of the State of Tennessee, from which the statute at issue arose.

The Affected Amici

The Affected Amici are birth parents, adoptive parents and adult adoptees in Tennessee adoptions who are seeking to enforce their rights under the Act to information in their adoption files. The Affected Amici, rather than Petitioners, represent the vast majority of those birth parents, adoptive parents and adoptees who are affected by the Act.

Amici Birth Parents

The Affected Amici include 17 birth parents who gave birth and surrendered their children for adoption between 1956 and 1975 inclusive. Their children are

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* No counsel for any party authored this brief in whole or in part. No person or entity other than the *amici curiae* and their counsel made any monetary contribution to the preparation or submission of the brief, except that printing expenses will be paid by the American Adoption Congress.

now from 21 to 41 years old. Throughout those years these *amici* have wondered whether their children were alive or dead, healthy or ill, normal or retarded, successful or unsuccessful, happy or unhappy. They have endured guilt, insomnia, depression and continual searching of the faces of children similar in age to their own children, looking for similarities. *See* Jason Kuhns, "The Sealed Adoption Records Controversy: Breaking Down the Walls of Secrecy," 24 GOLDEN GATE UNIV. L. REV. 259, 276 (1994).

Evidence indicates that the position of these *amici* in welcoming contact from their children is shared by over 99 percent of Tennessee birth parents. Glad Affidavit, Appendix 14. Evidence in the record also shows that in the five other states for which corresponding data is available, the position of *amici* is shared by 95 percent of the birth parents. Appendices 9-10, 12-14, 17. Figures for those five states are summarized in a footnote.[1]

Affidavits in the record from social workers with years of experience in adoption confirm that when birth

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[1] Adoptee Search Results

	Yes	No	Total	Source
Arizona	138	50	188	Scott
New Jersey	332	18	350	Gioglio
New Mexico	2653	14	2667	File
North Carolina	622	12	634	Giddens
Washington	3788	309	4097	Dean
Totals	7533	403	7936	
	94.9%	5.1%		

mothers consider surrendering their children for adoption, they want to be able to know about their children in the future. Baumann, Rardin and Robinson Affdts., App. 6, 15, 16, ¶ 2.

It is clear that the Affected Amici represent the vast majority of birth parents and that Petitioners' desire to hide from their children is shared by at most a very small minority of birth parents. This is confirmed by the numbers of birth parents who have already sought access to adoption records. Although the Act denies birth parents access to their children's adoption records unless such children are adults and have given written consent to such access (p. 7, *infra*), 134 birth parents had requested such access as of November 18, 1996. Affidavit of Jane E. Chittick, 11/21/96, App. 8.[2]

A number of the Amici birth parents carry dangerous hereditary medical conditions about which their children should be informed as soon as possible. The conditions include cardio-vascular problems, an allergy which can cause severe shock, peripheral neuropathy, glaucoma, malignant melanoma and cancers of the lungs, ovaries, stomach and other organs.

Amici Adoptive Parents

The Affected Amici also include 19 adoptive parents. They support the right of their children to know the

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[2] Ms. Chittick's later affidavit in the parallel state court proceeding subsequently brought by the same plaintiffs (p. 11-12, *infra*), shows that as of April 2, 1997, 348 birth parents and other birth relatives had applied for such access.

identities of their birth parents and to see the records of their adoptions. The Amici who are adoptive parents, not the Petitioners, represent the majority of adoptive parents in Tennessee.

Amici Adoptees

The Affected Amici include 33 adoptees whose ages range from 25 to 52 years. Many need access to their adoption records and to their birth parents for medical reasons.

One adoptee's affidavit particularly illustrates the need for the Act. She is the survivor of a pair of twins who requested medical information about their birth family under prior law, but did not receive it until eight years later, by which time the other twin had died from a hereditable type of cancer. The dead twin might be alive today if she had been allowed to know the identities of her birth parents and birth siblings and their medical histories, and obtain their help in such treatments as bone marrow transfers. The surviving twin suffers from tuberculosis, severe depression, heart trouble and sudden weight gain and loss, for all of which she needs current medical information concerning her birth family. Brewster Affidavit, App. 7.

Other Amici adoptees suffer from multiple sclerosis, blindness, cervical cancer, and progressive kidney problems, all of which require access to current birth family medical information in order to treat their own illnesses and to decide whether to bear children. Such information usually can be obtained only by contacting

birth parents. Medical information in most adoption files is vague, scanty and at least twenty years out of date. Most of the illnesses in question occur in middle age, and records from young mothers are of little help. Some treatments require donation of body parts.

All of the Amici adoptees need to know who gave them their lives, their bodies, their faces and their hereditary characters. They need to know the roots from which they spring in order to know themselves, to know what they will pass down to their descendants, and to care for their descendants' health needs.

The record below shows that, as of November 18, 1996, the Tennessee Department of Children's Services had received 682 requests from adoptees for access to their records pursuant to the Act. App. 8.[3]

STATEMENT OF FACTS

Petitioners misstate both the statute at issue ("the Act") and the prior Tennessee adoption law. They also fail to apprise the Court of their state court proceeding.

The Statute at Issue

The Act consists of amendments to the existing adoption law which were enacted by the Legislature in August of 1995 and May of 1996. (1995 Pub. Ch. 532; 1996 Pub. Chs. 1054 and 1068).

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[3] An affidavit by Ms. Chittick in the parallel state court action (p. 11-12, *infra*) shows that as of April 2, 1997, 1265 Tennessee adoptees had filed such requests.

The Legislature amended the prior adoption statute after three years of public hearings, study, drafting and revision, first by the legislatively created Commission to Study the Adoption Laws of the State of Tennessee ("the Adoption Commission"), and then by the Judiciary Committees and the Finance, Ways and Means Committees of both houses of the Legislature, by various subcommittees in both houses and finally by a special Joint Ad Hoc Committee of the Legislature. Exh. C to Fowlkes Affidavit, App. 11.

The Adoption Commission found that judicial and administrative responses to adoptees' requests for information under the prior law had been inconsistent, uncertain and contradictory. *Ibid.*

The Act allows adult adoptees, *i.e.*, at least 21 years old, (or if incompetent, their legal representatives) to obtain limited access to their adoption records. T.C.A. § 36-1-127(c), App. F to Petition. Adoptees' access is subject to numerous limitations and exclusions which Petitioners omit to mention.

Information relating to "crisis pregnancy counseling" of a birth mother is not subject to disclosure at all, without court order. T.C.A. §§ 36-1-102(5)(C), (41)(C) & (42)(C), App. 1. The circumstances of Promise Doe's pregnancy and her letter explaining her surrender (Promise Doe Affidavit, ¶¶ 6-7, Appendix K to Petition) would therefore be exempt from disclosure.[4]

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[4] Apparently Small World Ministries and Petitioners' attorneys did not inform Ms. Doe about the Act's prohibition on disclosing crisis pregnancy counseling information or about the Act's

All information, including home studies, obtained by any agency or person as part of the evaluation of prospective adoptive parents is exempt from disclosure, except and to the extent that such studies are expressly included in a report to the court that approved the adoption. *Ibid.*

If the adoption records indicate that the adoptee was the product of rape or incest, no identifying information may be released without the written consent of the biological parent who was the victim. T.C.A. § 36-1-127(e)(2), App. F to Petition.

Birth parents and other birth relatives cannot obtain access to adoption records unless (a) the adoptee is at least 21 years old, and (b) the adoptee expressly consents to such disclosure in writing. T.C.A. § 36-1-127(c)(1)(B) and (e)(1)(A), App. F to Petition.

If the birth parent's rights were involuntarily terminated for cause, she or he may not obtain any disclosure (with or without the adoptee's consent) without a court order. T.C.A. § 36-1-127(e)(1)(B), App. F to Petition.[5]

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restrictions on disclosure of any information to birth relatives (p. 7, *infra*). Promise Doe Affidavit, ¶¶ 4-9, App. K to Petition.

[5] Because of the restrictions on home studies and disclosure to birth parents, the fears of Petitioners Kimberly C. and Russ C. about disclosure to the birth parents of their adopted child Zackary are unfounded. Affidavit of Kimberly C. and Russ C., ¶¶ 6-9, Exh. I to Petition. Apparently neither Small World Ministries, through whom they adopted Zackary, nor Petitioner's counsel correctly informed them about the provisions of the Act.

If the adoption records indicate that the birth parent or other birth relative was guilty of a crime of violence or neglect involving the adoptee, the birth parent or relative may not obtain any disclosure (with or without the adoptee's consent) without a court order. T.C.A. § 36-1-127(e)(1)(C), App. F to Petition.

The Act limits contact between adoptee and birth relatives, limits the use of information obtained from adoption records and punishes violations of those limits.

Under the Act, birth parents may prohibit contact from adoptees by filing a contact veto. T.C.A. §§ 36-1-128 and 36-1-129, App. G to Petition. If a birth parent has not filed a contact veto before the adoptee requests access, the state must contact or attempt to contact the birth parent and allow opportunity to file a contact veto. T.C.A. §§ 36-1-130 and 36-1-131, App. G to Petition. The adoptee is forbidden to contact such persons until the State has completed its search and advised the adoptee whether or not a contact veto is in effect. T.C.A. § 36-1-130(a)(3), App. G to Petition. Before receiving any information from the adoption files, the adoptee must execute an affidavit agreeing to abide by these restrictions and acknowledging that he or she understands the civil and criminal penalties for violation of a contact veto. T.C.A. § 36-1-127(f), App. F to Petition.

Violations of a contact veto and premature contacts are punishable by injunction, compensatory damages, punitive damages and attorney's fees. T.C.A. § 36-1-132, App. 2.

In addition, any use of information obtained under the Act to cause injury to anyone identified in the adoption records is a misdemeanor and may also be the subject of a civil action for compensatory damages, punitive damages and an injunction. T.C.A. § 36-1-132(f), App. 2.

The Act is, in sum, a detailed, complex effort by the Tennessee legislature to balance the interests of all parties with respect to information in adoption records.

The Prior Adoption Law

The prior Tennessee adoption law was not intended to guarantee birth parents confidentiality from their children and did not do so. The statutory statement of purpose said nothing about confidentiality. On the contrary the legislature assumed correctly (p. 2, *supra*) that birth parents were more likely to want continued contact with their children. The statute was intended to:

> Protect [adoptees] from interference, long after they have become properly adjusted to their adoptive homes, by natural parents who may have some legal claim because of a defect in the adoption procedure [and]
>
> To prevent later disturbance of [adoptive parents'] relationship to the child by natural parents whose legal rights have not been fully protected.

T.C.A. § 36-1-101(a)(3) & (b) (repealed), Appendix 3.

The statutory purposes of the former adoption law specified:

> When the interests of a child and those of an adult are in conflict, such conflict should be resolved in favor of the child, and to that end this part shall be liberally construed.

T.C.A. § 36-1-101(c) (repealed), App. 3.

The former Tennessee adoption law prescribed a form of surrender to be signed by birth parents. The form assumed that birth parents were likely to want future contact with their children. The form contained no assurance of confidentiality from the adoptee. On the contrary, the birth parent was required to agree "not to attempt to disrupt this child's future relationship by visiting [or] attempting to communicate with" the child. T.C.A. § 36-1-114(d) (repealed), App. 4.

The former adoption law allowed disclosure of adoption records by several courts. T.C.A. § 36-1-131(a) (repealed), App. H to Petition. Such a proceeding could be brought by the adoptee (even if an infant) or by any member of the public. The information requested was to be disclosed if it was "in the best interest of the child or of the public to have such information disclosed." T.C.A. § 36-1-131(a) (repealed), App. H to Petition. No notice to the birth parent was required, and the birth parent had no right to appear, intervene, be heard or appeal. Only the Commissioners of Human Services and Health were required to be notified and were allowed to intervene and to respond. Only the moving

party and the Commissioners had standing to appeal. T.C.A. § 36-1-131(b) & (c) (repealed), App. H to Petition.

Under the former procedure for court-ordered disclosure, in short, birth parents were not entitled to notice, intervention, hearing, consideration or appeal.

Under the former adoption law as under the new (Petition, p. 11), the identity of birth parents was also subject to disclosure if the Department of Human Services could not locate the birth parents. If an adoptee at least 21 years old requested identifying information concerning the birth parents, the Department was required to search for the birth parents. If the Department could locate them, information would be released or not, as the birth parents directed. If the Department could not locate the birth parents, however, the adult adoptee was automatically entitled to a copy of the original birth certificate. T.C.A. § 36-1-141 (repealed), App. 5.

State Court Proceeding

On March 26, 1997, Petitioners herein began another action in the Tennessee Circuit Court for Davidson County, alleging that the Act violated the Tennessee Constitution. On March 27, 1997 the Tennessee Circuit Court issued a temporary restraining order enjoining enforcement of the Act. On May 2, 1997 that court ruled against Petitioners on all points and denied their motion for a temporary injunction, but left the temporary restraining order in effect until May 9, 1997.

On May 8, 1997 petitioners moved the Tennessee Court of Appeals for an extraordinary appeal and a stay in enforcement of the Act pending appeal. On May 9, 1997 that court granted the request for a stay pending the decision whether to accept the appeal. The motion for extraordinary appeal is presently *sub judice.*

As a result of the temporary restraining orders and stays granted by various courts in this action and in Petitioners' state court action, the State of Tennessee has been prevented from enforcing the Act except for the five days between March 21 and March 27, 1997. As a result, the State has been unable to process over 1,600 requests for access to records that had been submitted as of April 2, 1997 (pp. 3, 5, *supra*), plus whatever number have been filed since that date.

I.

THE DECISION BELOW IS CONSISTENT WITH THE DECISIONS OF THIS COURT AND OF OTHER FEDERAL AND STATE COURTS CONCERNING DISCLOSURE OF PERSONAL INFORMATION AND ACCESS TO ADOPTION RECORDS.

The Act is similar to the New York statute concerning computer records of drug patients which this Court found did not "constitute an invasion of any right or liberty protected by the Fourteenth Amendment" in *Whalen v. Roe,* 429 U.S. 589, 603-04 (1977). As in *Whalen,*

> The ... statute challenged in this case represents a considered attempt to deal with such a problem [of vital local concern]. It is manifestly the product of an orderly and rational legislative decision. It was recommended by a specially appointed commission which held extensive hearings on the proposed legislation, and drew on experience with similar programs in other States [and countries].

Whalen, 429 U.S. at 597.

As this Court stated in rejecting former President Nixon's invasion of privacy claim:

> [T]he merit of [petitioners'] claim of invasion of [their] privacy cannot be considered in the abstract; rather, the claim must be considered in light of the specific provisions of the Act, and any intrusion must be weighed against the public interest....

Nixon v. Administrator of General Services, 433 U.S. 425, 458 (1977).

A. The Act Infringes Neither Familial Privacy Rights Nor Confidentiality Privacy Rights.

Petitioners' claim with respect to "familial privacy rights" boils down to speculation that the Act will disrupt birth parents' families (Petition, pp. 9-11).[6]

[6] There is no factual support for this speculation. Adoptees' searches for their birth parents, often using private detectives, have been common over the last three decades. There have been tens or

Virtually all the assumptions underlying petitioners' argument are incorrect. Rather than permitting "parents, siblings, lineal ancestors and lineal descendants" of adoptees to have unlimited access (Petition, p. 9), the Act denies them access entirely, unless the adult adoptee consents (p. 7, *supra*). Even adult adoptees cannot obtain access to "all adoption records" (*cf.* Petition, p. 9); home study and similar information about the adoptive family is excluded, as is "crisis pregnancy counseling" information (pp. 6-7, *supra*). Disclosure is entirely prohibited in cases of rape or incest, unless the victim birth parent consents (p. 7, *supra*). Likewise, disclosure to culpable birth parents is entirely barred, even if the adult adoptee consents (pp. 7-8, *supra*). The contact veto and its related waiting period are enforced by multiple sanctions; unlawful disclosure of information obtained under the Act is subject to both criminal and civil penalties (pp. 8-9, *supra*).

The issue in this case, therefore, is not public disclosure of intimate information, but disclosure of

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hundreds of thousands of adoptee-birth parent reunions with and without statutory assistance. Any destroyed marriages, with all their melodramatic aspects, would have been publicized by the media, which have already made adoptee-birth parent reunions a staple of talk shows, sitcoms, film comedies and human interest articles by groups that lobby for closed adoption records. Petitioners can point to only one such report, and that was a hearsay report of a "disrupted" marriage at least twenty years ago. *Mills v. Atlantic City Dept. of Vital Statistics*, 148 N.J. Super. 302, 311, 372 A.2d 646, 651 (Ch. 1977) (cited in Petition, p. 10, n. 4).

birth parents' identities to their own children. No case has held that the Constitution prohibits such disclosure. The decisions cited by petitioners as conflicting[7] hold only that it is within the discretion of the state legislatures to decide whether, how and to what extent adoption records may be sealed and unsealed.

Petitioners' unsupported speculation that adoptees will violate contact vetoes or recklessly disclose information about their birth parents to the world at large[8] (Petition, pp. 10-11) is not evidence and cannot invalidate the Legislature's carefully crafted act. *Whalen*, 429 U.S. at 601-02 ("assumption that the security provisions of the statute will be administered improperly" and "remote possibility that judicial supervision ... will provide inadequate protection against unwarranted disclosures" insufficient for invalidation).

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[7] *Alma Society, Inc. v. Mellon*, 601 F.2d 1225 (2nd Cir. 1979), *cert. den.*, 444 U.S. 995 (1979); *In re Assalone*, 512 A.2d 1383 (R.I. 1986); *Bradey v. Children's Bureau*, 274 S.E.2d 418 (S.C. 1981); *Matter of Dixon*, 116 Mich. App. 763, 323 N.W.2d 549 (1982); *Kirsch v. Parker*, 375 So.2d 693 (La. Ct. App. 1979), *mod.*, 383 So.2d 384 (La. 1980); *Massey v. Parker*, 362 So.2d 1195 (La. Ct. App. 1978), *rev'd*, 369 So.2d 1310 (La. 1979); *Matter of Spinks*, 32 N.C. App. 422, 232 S.E.2d 479 (1977); *Mills v. Atlantic City Dept. of Vital Statistics*, 148 N.J. Super. 302, 372 A.2d 646 (1977).

[8] Petitioners' conjectures that adult adoptees will try to injure their birth parents is unsupported by any evidence. It appears to be only one more example of the prejudice against persons born out of wedlock that this Court has frequently condemned. E.g., *Weber v. Aetna Casualty & Surety Co.*, 406 U.S. 164, 175 (1972); *cf. King Lear*, Act I, Sc. II, ll. 1-22.

There is and can be no constitutional right to conceal one's identity from one's child. Kansas and Alaska have always allowed adoptees access to their original birth certificates as of right. Alaska Stat. § 18.50.500(a) (1996); K.S.A. § 59-2122(a) (1994); K.S.A. § 65-2423(a) (Supp. 1996). If the Fourteenth Amendment gave birth parents the right to conceal their identities from their children, such statutes would be unconstitutional.

Petitioners' theory would also invalidate paternity suits, which have been authorized for over four centuries for the express purpose of establishing the fact of parentage at the behest of the state, the child, or the mother. Federal law requires states to maintain effective procedures to establish paternity. 42 U.S.C. § 654(4)(A) (1975). Such procedures would be unconstitutional under Petitioners' theory.

This Court has held, on the contrary, that a "putative father has no legitimate right and certainly no liberty interest in avoiding financial obligations to his natural child that are validly imposed by state law." *Rivera v. Minnich*, 483 U.S. 574, 580 (1987). Birth parents have still less "legitimate right" and "liberty interest in avoiding" simple disclosure of their identities.

B. The Act Infringes No Reproductive Privacy Rights; If It Has Any Effect on Adoption and Abortion Choices, It Will Increase Adoptions and Decrease Abortions.

Petitioners' "reproductive privacy rights" argument rests on their assumption that the Act will burden

adoptions and promote abortions. The Court of Appeals declined to find that the Act would have any such effect, but correctly held that "any burden that does exist is incidental and not undue." 106 F.2d at 706, App. A to Petition, p. 6a.

The record and statistical evidence clearly indicate that the assumptions of legislative fact underlying Petitioners' argument are false. Petitioners claim that birth "parents rely on anonymity" and "confidentiality." Petition, pp. 13, 15. The only relevant "anonymity" or "confidentiality" is from their children, since only adoptees have a right of access. The record evidence shows that the vast majority of birth parents never wanted and do not now want any such anonymity or confidentiality; on the contrary, they want the opportunity to know that their children are alive and well and to have their children contact them (pp. 2-3, *supra*).

Because the great majority of birth parents desire knowledge of and contact with their surrendered children, any effect of opening records under the Act must necessarily be in the direction of increasing adoptions and decreasing abortions. Published statistics confirm this. Alaska and Kansas are the only two states which have always allowed adult adoptees access to their birth records (p. 16, *supra*). As the table below shows, adoption rates are higher and abortion rates are lower in those states than in the United States as a whole or in any of the four states that surround Kansas, all of which have closed adoption records.

Adoption and Resident Abortion Rates

State	Adoptions per Thousand Persons (1992)[10]	Adoptions per Thousand Live Births (1992)[10]	Resident Abortion Rates[9] (1987)[10]
U. S.	.498	31.2	26.7
Alaska	1.068	53.5	21.5
Kansas	.730	48.4	13.4
Colorado	.409	26.0	21.1
Missouri	.404	27.5	19.6
Nebraska	.619	42.4	15.5
Oklahoma	.706	47.6	14.7

Sources: Flango and Flango (National Center for Court Statistics), "How Many Children Were Adopted in 1992," 74 CHILD WELFARE 1018, 1021-22 (1995)
Alaska Bureau of Vital Statistics, 1994 Annual Report, p. 59.
Statistical Abstract 1995, Tables 27 and 90.
Alan Guttmacher Institute, *Abortion Factbook, 1992 Edition*, p. 80.

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[9] Numbers of abortions obtained by residents, divided by numbers of women aged 15-44, in thousands.

[10] These are the latest years for which published data are available. Unpublished data for abortions in 1992 (the most recent year available) were submitted to the court below and yield the same conclusion.

II.

THE ACT IS NOT RETROACTIVE; PRIOR TENNESSEE LAW DID NOT PROMISE CONFIDENTIALITY FROM ADOPTEES.

Petitioners' retroactivity argument, as well as their "confidentiality privacy rights" argument, rests on the erroneous premise that Tennessee promised birth parents and adoptive parents "secrecy" from adoptees (Petition, pp. 19, 21). As the State of Tennessee recognized in its prior law, the vast majority of birth parents wanted no such assurance or promise (pp. 2-3, 9-10, *supra*). Consequently the prior Tennessee law authorized no such promises or expectations, and the State Department of Human Services neither made nor authorized any such assurances (pp. 10-11, *supra*).

The former Supervisor of Adoptions, who held that position for three decades, testified to the Adoption Commission that she had authorized and was aware of no promise of confidentiality to birth parents at any time under the former law. Exhibit C to Affidavit of Joe Fowlkes, Appendix 11.

Under the prior Tennessee adoption law, any of several courts could order adoption information released to adoptees without notice to, participation of or consideration of birth parents (pp. 10-11, *supra*). Under the prior law, the identities of birth parents could be released without court order if the Department of Human Services could not locate them p. 11, *supra*). The Tennessee Adoption Commission found that

judicial and administrative implementation of these statues was in fact unpredictable (p. 6, *supra*).

Such laws and implementation supported no reasonable expectation of privacy from adoptees. "An uncertain privilege, or one which purports to be certain that results in widely varying applications by the courts, is little better than no privilege at all." *Jaffee v. Redmond*, 135 L. Ed. 2d 337, 349 (1996).

If any of the individual petitioners were misled by Small World Ministries or other agencies as to the provisions of prior law (*see* nn. 4 and 5, *supra*), their remedy, if any, must be against those who misled them, not against the innocent adoptees, nor against the vast majority of birth parents who want their children to be able to know of them.

CONCLUSION

The petition should be denied.

Respectfully submitted,

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June 13, 1997

APPENDIX 1.

Tennessee Code Annotated

36-1-102. Definitions.

As used in this part, unless the context otherwise requires:

* * *

(5) "Adoption record" means:

(A)(i) The records, reports, or other documents maintained in any medium by the judge or clerk of the court, or by any other person pursuant to this part who is authorized to witness the execution of surrenders or revocations of surrenders, which records, reports or documents relate to an adoption petition, a surrender of parental consent, a revocation of a surrender or parental consent, or which reasonably relate to other information concerning the adoption of a person, and which information in such records, reports, or documents exists during the pendency of an adoption or a termination of parental rights proceeding or which records, reports or documents exist prior to those records, reports or documents becoming a part of a sealed adoption record pursuant to § 36-1-126; or

(ii) The records, reports, or documents maintained in any medium by the department's social services division, or by a licensed or chartered child-placing agency or licensed clinical social worker, and which records,

reports, or documents contain any social, medical, legal, or other information concerning an adopted person, a person who has been placed for adoption or a person for whom adoptive placement activities are currently occurring, and which information in such records, reports or documents exists during the pendency of an adoption or termination of parental rights proceeding, or which exists subsequent to the conclusion of those proceedings, even if no order of adoption or dismissal of an adoption has been entered, but which records, reports or documents exist prior to those records, reports or documents becoming sealed records or sealed adoption records pursuant to § 36-1-126.

(B) The adoption record is confidential, and except as otherwise permitted by this part, is not subject to disclosure by the court, a licensed child-placing agency, licensed clinical social worker or other person or entity except, prior to the record becoming a sealed record or a sealed adoption record pursuant to § 36-1-126, as may be necessary for purposes directly related to the placement, care, treatment, protection, or supervision by the legal custodian, legal guardian, conservator, or other legally authorized caretaker, of the person who is the subject of the adoption proceeding or as necessary for the purposes directly related to legal proceedings involving the person who is subject to the jurisdiction of a court in an adoption proceeding or other legal proceeding related to an adoption, including termination of parental rights, or as may otherwise be necessary for use in any child or adult protective services proceedings concerning the

person about whom the record is maintained pursuant to titles 37 and 71.

(C) The adoption record shall not, for purposes of release of the records pursuant to §§ 36-1-127 – 36-1-141 be construed to permit access, without a court order pursuant to § 36-1-138, to home studies or preliminary home studies or any information obtained by the department, a licensed or chartered child-placing agency, a licensed clinical social worker, or other family counseling service, a physician, a psychologist, or member of the clergy, an attorney or other person in connection with a home study or preliminary home study as part of an adoption or surrender or parental consent proceeding or as part of the evaluation of prospective adoptive parents, other than those studies which are expressly included in a report to the court by such entities or persons. Information relating to the counseling of a biological mother regarding crisis pregnancy counseling shall not be included in the adoption record for purposes of release pursuant to this part without a court order pursuant to § 36-1-138;

* * *

(41)(A) "Sealed adoption record" means:

(i) The adoption record as it exists subsequent to its transmittal to the department, or subsequent to its sealing by the court, pursuant to the requirements of § 36-1-126; or

(ii) The limited record maintained by the licensed or chartered child-placing agency or licensed clinical social worker pursuant to § 36-1-126(b)(2).

(B) This record is confidential and shall be opened only as provided in this part.

(C) The sealed adoption record shall not, for purposes of release of the records pursuant to §§ 36-1-127 – 36-1-141 be construed to permit access, without a court order pursuant to § 36-1-138, to home studies or preliminary home studies or any information obtained by the department, a licensed or chartered child-placing agency, a licensed clinical social worker, or other family counseling service, a physician, a psychologist, or member of the clergy, an attorney or other person in connection with a home study or preliminary home study as part of an adoption or surrender or parental consent proceeding or as part of the evaluation of prospective adoptive parents, other than those studies which are expressly included in a report to the court by such entities or persons. Information relating to the counseling of a biological mother regarding crisis pregnancy counseling shall not be included in the adoption record for purposes of release pursuant to this part without a court order pursuant to § 36-1-138;

(42)(A) "Sealed record" means:

(i) Any records, reports or documents which are maintained at any time by a court, a court clerk, a licensed or chartered child-placing agency, licensed

clinical social worker, the department, the department of health, or any other information source concerning the foster care or agency are placement, or placement for adoption, of a person by any branch of the Tennessee children's home society authorized by Public Chapter 117 (1919); or

(ii) Any records, reports or documents maintained by a judge, a court clerk, the department, a licensed or chartered child-placing agency, a licensed clinical social worker, the department of health, or any other information source which consists of adoption records or information about an adoption proceeding or a termination of parental rights proceeding about an adopted person, or which contain information about a person who was placed for adoption but for whom no adoption order was entered or for whom an adoption proceeding was dismissed or for whom an adoption was not otherwise completed, or which contain information concerning persons in the care of any person or agency, and which records have otherwise been treated and maintained by those persons or entities under prior law, practice, policy, or custom as confidential, non-public adoption records, sealed adoption records, or post-adoption records of the person, or which may be otherwise currently treated and maintained by those persons or entities as confidential, non-public adoption records, sealed adoption records or post-adoption records of the person; or

(iii) The limited record maintained by the licensed or chartered child-placing agency or a licensed clinical social worker pursuant to § 36-1-126(b)(2).

(B) This record is confidential and shall be opened only as provided in this part.

(C) The sealed record shall not, for purposes of release of the records pursuant to §§ 36-1-127 – 36-1-141 be construed to permit access, without a court order pursuant to § 36-1-138, to home studies or preliminary home studies or any information obtained by the department, a licensed or chartered child-placing agency, a licensed clinical social worker, or other family counseling service, a physician, a psychologist, or member of the clergy, an attorney or other person in connection with a home study or preliminary home study as part of an adoption or surrender or parental consent proceeding or as part of the evaluation of prospective adoptive parents, other than those studies which are expressly included in a report to the court by such entities or persons. Information relating to the counseling of a biological mother regarding crisis pregnancy counseling shall not be included in the adoption record for purposes of release pursuant to this part without a court order pursuant to § 36-1-138;

* * *

[Acts 1951, ch. 202, §§ 2, 40 (Williams, §§ 9572.16, 9572.52); 1961, ch. 227, § 1; 1972, ch. 612, § 7; 1972, ch. 624, § 1; impl. Am. Acts 1975, ch. 219, § 1; 1976, ch.

394, § 1, modified; Acts 1978, ch. 704, § 1; 1983, ch. 435, § 7; T.C.A. (orig. ed.), § 36-102; Acts 1990, ch. 988, § 1; 1993, ch. 124, §§ 5, 6; § 36-1-102; Acts 1995, ch. 532, § 1; 1996, ch. 1054, §§ 3-15, 104; 1996, ch. 1079, § 69.]

APPENDIX 2.

Tennessee Code Annotated

36-1-132. Violation of contact veto a misdemeanor — Injunction and damages — Attorney's Fees — Using information to injure persons whose names were obtained.

(a) Any person who has filed a contact veto pursuant to this part or the adopted person or a person for whom records are maintained as described in § 36-1-127(c)(1)(A), or such person's legal representative, shall have a cause of action in the circuit or chancery court for injunctive relief and for compensatory and punitive damages against any person or entity who or which has violated the provisions of the contact veto or for violation of any restrictions on contact with the adopted person or a person for whom records are maintained as described in § 36-1-127(c)(1)(A).

(b) Venue for such action shall be in the county of the residence of the plaintiff, or, if the plaintiff resides out of state, in the county where the adoption petition was originally filed, or if no petition was filed, or if its venue is unknown, in the chancery or circuit court of any county with a population of one hundred thousand (100,000) or greater as established by the federal census of 1990 or any subsequent census.

(c) A certified copy of the sworn statement which was signed pursuant to § 36-1-127(f) or § 36-1-

130(a)(6)(A)(vi), by the person against whom the action is brought for violation of the contact veto shall be admissible in the action under this section as conclusive evidence of that person's knowledge of the restrictions imposed by a contact veto or the restrictions imposed by § 36-1-130.

(d) Any person who has filed a contact veto or an adopted person for whom records are maintained as described in § 36-1-127(c)(1)(A), or such person's legal representative, who has prevailed in an action under subsection (a) shall be entitled to recover attorney's fees and all costs of the proceeding from the opposing party or parties.

(e) Any action under this section shall be brought within three (3) years of any contact or attempted contact or violation of other restrictions on contact in violation of this part.

(f) Any person who, after obtaining information under this part, uses such information to cause injury to the person whose name was obtained under this part, commits a Class A misdemeanor. Further, any person who has been injured pursuant to this subsection shall have a cause of action in the circuit or chancery court for injunctive relief and damages, including both compensatory and punitive damages, against any person who uses the information in violation of this subsection.

[Acts 1995, ch. 532, § 1; 1996, ch. 1054, § 119; 1996, ch. 1068, § 1.]

APPENDIX 3.

[Former] Tennessee Code Annotated

36-1-101. Purpose of part — Construction. — (a) The primary purpose of this part is to:

(1) Protect children from unnecessary separation from parents who might give them good homes and loving care;

(2) Protect them from adoption by persons unfit to have the responsibility of their care and rearing; and

(3) Protect them from interference, long after they have become properly adjusted to their adoptive homes, by natural parents who may have some legal claim because of a defect in the adoption procedure.

(b) The secondary purpose of this part is to protect the natural parents from hurried decisions, made under strain and anxiety, to give up a child, and to protect foster parents from assuming responsibility for a child about whose heredity or mental or physical condition they know nothing, and to prevent later disturbance of their relationship to the child by natural parents whose legal rights have not been fully protected.

(c) When the interests of a child and those of an adult are in conflict, such conflict should be resolved in favor of the child, and to that end this part shall be liberally construed. [Acts 1951, ch. 202, § 1 (Williams, § 9572.15); T.C.A. (orig. ed.), § 36-101.]

APPENDIX 4.

[Former] Tennessee Code Annotated

36-1-114. Surrender of child — Form of surrender — Waiver of interest. —

* * *

(d) Except when a surrender is made in accordance with the laws of a state or territory of the United States other than the state of Tennessee as provided in subsection (a), the surrender shall be formally executed and signed in quadruplicate on the following prescribed form, which the department shall furnish and keep available in the office of the clerk and master in all chancery courts and in the office of the circuit court clerks of this state and which shall be available in the state office of the department for distribution to anyone requesting same:

SURRENDER OF A CHILD BY THE NATURAL PARENT(S) DIRECTLY TO PROSPECTIVE ADOPTIVE PARENTS

(I or we), the undersigned (father, mother), deeming it for the best interest of (my or our) child, (name of child), (sex), born (birthdate) in (birthplace), in wedlock yes ( ) or no ( ), hereby execute the surrender of all parental rights and responsibilities and consent for the child to be legally adopted by (name of adopting father

and full legal name of adopting mother).

(I or we), have the legal right to surrender this child for adoption as the child's legal parent(s) by birth. If one (1) parent is sole guardian of the child, fill in the following: Death of (name of spouse) on (date) in (place of death); or child was born out of wedlock ( ).

(I or we), understand that by signing this surrender all (my, our) rights and responsibilities with respect to this child are terminated.

(I or we) agree not to attempt to disrupt this child's future relationship by visiting, attempting to communicate with (name of child), or attempting (his or her) removal either physically or through legal proceedings.

SIGNATURE OF NATURAL PARENTS

Mother: (birthdate), (race), (marital status), (permanent address: street, city, state)

Signed: (full legal name of mother)

Father: (birthdate), (race), (marital status), (permanent address: street, city, state)

Signed: (full legal name of father)

AGREEMENT OF ADOPTING PARENTS

(I or we), the prospective adopting parent(s), understand that by affixing (my or our) signature to this surrender, (I or we) hereby agree to assume responsibility for the care, custody, financial support, medical care, education, moral and spiritual training of (name of child).

SIGNATURE OF NATURAL PARENTS

Mother: (birthdate), (race), (marital status),

Signed: (full legal name of mother)

Permanent Address: (street, city, state)

Father: (birthdate), (race), (marital status),

Signed: (full legal name of father)

Permanent Address: (street, city, state)

WITNESS OF SURRENDER

(name of natural parent(s)) personally appeared before me on (date), in Chambers for the purpose of surrendering (name of child) to (name of adopting parent(s)) for adoption and stated that (he, she or they) being the (mother, father or parent(s)) of (name of child)

and accepts full responsibility for this free and voluntary act.

Signed: (Chancellor or Judge) of (Chancery or Circuit) Court of _____ county, State of _____ on the (day) of (month), (year).

* * *

[Acts 1951, ch. 202, §§ 8,40 (Williams, §§ 9572.22, 9572.52); 1955, ch. 320, § 3, 1959, ch. 223, § 5; 1961, ch. 150, § 3; 1963, ch. 355, § 1; impl. Am. Acts 195, ch. 219, § 1, Acts 1978, ch. 611, §§ 1, 2; Acts 1980, ch. 526, § 1, T.C.A. (orig. ed.), § 36-114; Acts 1986, ch. 767, §§ 2-5; 1990, ch. 912, § 1.]

APPENDIX 5.

[Former] Tennessee Code Annotated

36-1-141. Disclosure of adoption records. — (a)(1) Notwithstanding any provision of law to the contrary, upon written request of an adopted person twenty-one (21) years of age or older, the department shall search the sealed adoption records in its possession for information concerning the location of the adopted person's biological parents.

(2) Upon locating the adopted person's biological parents, the department shall notify the biological parents of the inquiry by the adopted person. If, for any reason, the biological parents object, then no information contained in the sealed adoption records shall be disclosed. If the biological parents, or either of them, consent, the adopted person shall be provided with the name, address, and other identifying information concerning the biological parent contained in the sealed adoption records.

(3) If, after a diligent search, including the sending of notice to the last known mailing address of the biological parents, the biological parents, or either of them, cannot be located, the department shall inform the adopted person of this fact in writing with a copy of such correspondence being sent to the office of vital records. The adopted person may then submit to the office of vital records the correspondence or a copy thereof from the department and the amount of fee charged by the office of vital records for opening the

sealed file and issuing a certified copy of the adopted person's original birth certificate. Notwithstanding the provisions of §§ 68-3-313, upon receipt of this correspondence and fee, the office of vital records shall provide the adopted person with a certified copy of such adopted person's original birth certificate.

(4) This section is intended to provide an alternative means of obtaining disclosure of adoption records by an adopted person and shall not be construed as interfering with or limiting the rights of courts to unseal adoption records.

(b) For the purpose of complying with the provisions of this action, the department shall be granted access to and shall be provided a certified copy of the original birth certificate of such adopted person in the custody of the office of vital records, notwithstanding the provisions of § 68-3-313. [Acts 1985, ch. 285, §§ 1, 2; 1986, ch. 767, § 10; 1989, ch. 507, §§ 1, 3-5.]

APPENDIX 6.

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
AT NASHVILLE

PROMISE DOE, KIMBERLY C. and RUSS C., and SMALL WORLD MINISTRIES, INC.,	)	
Plaintiffs,	)	
v.	)	No. 3-96-0599 JUDGE NIXON
DONALD SUNDQUIST, Governor of the State of Tennessee, in his official capacity; CHARLES BURSON, Attorney General of the State of Tennessee, in his official capacity; and LINDA RUDOLPH, in her official capacity as the Commissioner of the Department of Human Services for the State of Tennessee,	)	
Defendants.	)	

AFFIDAVIT

STATE OF KANSAS)
)
COUNTY OF SHAWNEE)

I, CAROL BAUMANN, being first duly sworn according to law, do hereby depose and state as follows:

1. I am an adult citizen and resident of Kansas. I have been a licensed clinical social worker for sixteen years, or since 1979, and am licensed by the state of Kansas in social work. I am the Executive Director of a licensed child placing agency in Topeka, Kansas called BPS Independent Adoptions.

2. I have worked extensively with women dealing with unplanned pregnancies. Of the ones who chose to give birth to the children and place them for adoption, my experience has been that a large number would never consider adoption if they were going to be denied knowledge of their child's health and well-being.

3. I have also worked extensively with adult adoptees who are struggling with their identities. My experience has also been that for adoptees, access to their adoption records and original birth certificates has been extremely therapeutic. All the adoptees with whom I have worked have been sensitive to their birth parents' possible feelings.

4. It is my hope, as an adoption counselor and advocate, that every person who was raised by anyone other than their biological parents will know their heritage and history, and that the information most of us take for granted will not be denied to those who had no voice when an adoption choice was made for them.

/s/ Carol Baumann, LSCSW

Sworn to and subscribed before me this 16th day of July, 1996.

/s/ Notary Public

APPENDIX 7.

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
AT NASHVILLE

PROMISE DOE, KIMBERLY C. and RUSS C., and SMALL WORLD MINISTRIES, INC.,	)	
Plaintiffs,	)	
v.	)	No. 3-96-0599
	)	JUDGE NIXON
DONALD SUNDQUIST, Governor of the State of Tennessee, in his official capacity; CHARLES BURSON, Attorney General of the State of Tennessee, in his official capacity; and LINDA RUDOLPH, in her official capacity as the Commissioner of the Department of Human Services for the State of Tennessee,	)	
Defendants.	)	

AFFIDAVIT

STATE OF TENNESSEE)
)
COUNTY OF DAVIDSON)

I, BRENDA KAYE BREWSTER, being first duly sworn according to law, do hereby depose and state as follows:

1. I have previously filed an affidavit with this Court in this action identifying myself as an adopted person whose adoption took place in Tennessee, all of the records of which have remained in Tennessee, and the access of which are subject to Tennessee law. I have attempted to gain access to my records in the past without success. The only information I could receive was in using the "Non-Identifying Birth Family Information" form from the Tennessee Department of Human Services. Virtually all of the information I received about my birth parents were that they were a white American couple in their mid-20's. Also, I learned that I had three other siblings.

2. I had a twin sister named Faye who was adopted with me. We learned when we were 13 that we were adopted by the Rigdon family.

3. Over the years, I have had a series of medical problems that make obtaining my adoption records extremely important to me. These medical problems have included tuberculosis, severe depression, heart trouble, and sudden weight gain and loss. In 1984, I formally requested medical information for Faye and myself from the Tennessee Department of Human Services. I did not receive any medical information.

4. I was not aware of a 1985 amendment to Tennessee law that would have allowed me to go to Chancery Court to file suit to obtain my adoption records.

5. In 1990, my twin sister Faye died of what I understand to have been a rare cancer spawned by a mutated gene we share in our DNA. Two years later, in 1992, I received a letter from the Tennessee Department of Human Services informing me that my maternal grandmother had died of cancer, and that they were sorry they did not give me this information in 1986. I feel that if Faye had had that information in 1986, she may have been able to receive treatment to prevent the cancer, or keep it from having been fatal.

6. It was my hope, that with the passage of the new Tennessee statute by the General Assembly, which is codified at T.C.A. §§ 36-1-101 *et seq.*, that I would be able to obtain my adoption records.

/s/ Brenda Kaye Brewster

Sworn to and subscribed before me this 23rd day of July, 1996.

/s/ Notary Public

APPENDIX 8.

IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

PROMISE DOE; JANE ROE; KIMBERLY C. and RUSS C.; and SMALL WORLD MINISTRIES, INC.,	)	
Plaintiffs/Appellants,	)	
v.	)	No. 96-6197
DONALD SUNDQUIST, Governor of the State of Tennessee, in his official capacity; JOHN KNOX WALKUP, Attorney General of the State of Tennessee, in his official capacity; and LINDA RUDOLPH, in her official capacity as the Commissioner of the Department of Human Services for the State of Tennessee,	)	
Defendants/Appellees.	)	

AFFIDAVIT

STATE OF TENNESSEE)
)
COUNTY OF DAVIDSON)

I, JANE E. CHITTICK, being first duly sworn according to law, do hereby depose and state as follows:

1. I am the Program Director for Adoption Services with the Tennessee Department of Children's Services. As such, I am responsible for overseeing the receiving and processing requests for services through the post adoption program including access to sealed adoption records in Tennessee.

2. The Department of Children's Services began accepting requests for adoption records pursuant to T.C.A. § 36-1-127(c) on July 25, 1996, after the District Court modified its TRO and allowed us to accept such requests. Since this Court has granted a stay of the District Court's ruling pending appeal, we have continued to accept such requests but are not processing them pending further orders from this or another court.

3. As of Monday, November 18, 1996, we have received 873 such requests. These requests were as follows: 682 from adoptees requesting records, 134 from birth parents requesting records, 23 from birth siblings requesting records, and 34 requests for contact consent/ veto forms.

/s/ Jane E. Chittick

Sworn to and subscribed before me this 21st day of November, 1996.

/s/ Notary Public

APPENDIX 9.

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE

PROMISE DOE, KIMBERLY C. and RUSS C., and SMALL WORLD MINISTRIES, INC., Plaintiffs, v. DONALD SUNDQUIST, Governor of the State of Tennessee, in his official capacity; CHARLES OF BURSON, Attorney General of the State of Tennessee, in his official capacity; and LINDA RUDOLPH, in her official capacity as the Commissioner of the Department of Human Services for the State of Tennessee, Defendants.	Case No. 3-96-0599 JUDGE NIXON DECLARATION MARILYN DEAN

STATE OF WASHINGTON)
: ss.:
COUNTY OF KING)

1. I am a member of the Washington Adoption Rights Movement ("WARM") with the title of Confidential Intermediary Liaison. The statements

herein are based upon my personal knowledge and upon records maintained by WARM, as described below.

2. For over fifteen years, volunteer members of WARM have acted as court-appointed confidential intermediaries in the conduct of searches, at the request of adoptees, for the adoptees' birth parents or other birth relatives, pursuant to Washington Statutes § 26.33.343. Under that statute, if an adoptee over the age of 21, or an adoptee under 21 with permission of the adoptive parent, petitions a court of this state to appoint a confidential intermediary to conduct such a search, such an intermediary is appointed. All such intermediaries must receive special training and sign a statement of confidentiality as a condition of their appointment.

3. Members of WARM, acting as volunteers without compensation other than reimbursement of out-of-pocket expenses, have acted as such confidential intermediaries for over fifteen years. From 1981 to date, WARM has kept numerical records of the results of such searches by its member volunteer intermediaries, based upon the reports to the courts filed by the intermediaries when the searches are completed. I and one other member of WARM have been in charge of keeping such records.

4. Those records show that from 1981 to date, such searches have contacted a total of 4,097 birth mothers who accepted or refused disclosure of their identities to the children whom they had placed for adoption. Of that number, 3,788 or 92.5 percent consented in writing to such disclosure, and 309 or 7.5 percent refused such disclosure.

5. In addition to those birth mothers tabulated above, a small number of birth mothers have been contacted and have neither consentd to nor refused to disclose their identities, but have nstead engaged in correspondence with the adoptees through the confidential intermediaries. WARMhas not kept count of the number of searches that are n this status, but I estimate the number to be approxinately 120. In my experience, most birth mothers wo engage in such correspondence eventually accept pesonal contact with their children.

I declare under penalty of perjur that the foregoing is true and correct.

Executed August 19, 1996 /s/Marilyn Dean

APPENDIX 10.

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE

PROMISE DOE, KIMBERLY C. and RUSS C., and SMALL WORLD MINISTRIES, INC.,	)	
Plaintiffs,	)	Case No. 3-96-0599
v.	)	JUDGE NIXON
DONALD SUNDQUIST, Governor of the State of Tennessee, in his official capacity; CHARLES OF BURSON, Attorney General of the State of Tennessee, in his official capacity; and LINDA RUDOLPH, in her official capacity as the Commissioner of the Department of Human Services for the State of Tennessee,	)	DECLARATION SALLY FILE
Defendants.	)	

STATE OF NEW MEXICO)
)
COUNTY OF BERNALILLO)

1. I reside in Albuquerque, New Mexico. Since November 1978 I have conducted searches for birth parents on behalf of adoptees and for adoptees on behalf

appointed confidential intermediary pursuant to Section 32A-5-41 of the New Mexico Statutes.

2. In New Mexico adoption records and the original birth certificates of adoptees are sealed. Under Section 32A-5-41, however, a court may appoint a confidential intermediary on the petition of an adult adoptee (i.e. one at least 18 years old), the adoptive parent of a minor adoptee, or the birth parent of an adult adoptee. It is the intermediary's duty (a) to search the adoption file and follow any written instructions as to contact, (b) if there are no such instructions, to attempt to locate the birth parent or adoptee, as the case may be, and discreetly to contact the birth parent or adoptee to learn whether the birth parent or adoptee does or does not wish to have contact with or to release identifying information to the petitioner, and (c) to report that information to the petitioner and to the court. A confidential intermediary must sign and file with the court a statutorily prescribed oath to perform the duties of the office, which are described in detail in the oath. Before the confidential intermediary statute was enacted, I followed substantially the same search procedure, but without access to adoption files or reports to the court.

3. From November 1978 until the summer of 1994 I kept numerical count of the result of all my searches. I stopped keeping count when I had completed exactly 4,000 such searches.

4. Approximately ⅔ of these 4,000 searches, or approximately 2,700, were for birth parents upon petition of adoptees. Of that number, all but 14 birth parents welcomed contact with their children whom

they had given up for adoption. In other words, over 99% welcomed such contact and less than 1% refused it. Most said they were thrilled and relieved.

I declare under penalty of perjury that the foregoing is true and correct.

Executed September 6, 1996 /s/ Sally File

APPENDIX 11.

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
AT NASHVILLE

PROMISE DOE, KIMBERLY C. and RUSS C., and SMALL WORLD MINISTRIES, INC.,	)	
Plaintiffs,	)	
v.	)	No. 3-96-0599 JUDGE NIXON
DONALD SUNDQUIST, Governor of the State of Tennessee, in his official capacity; CHARLES BURSON, Attorney General of the State of Tennessee, in his official capacity; and LINDA RUDOLPH, in her official capacity as the Commissioner of the Department of Human Services for the State of Tennessee,	)	
Defendants.	)	

AFFIDAVIT

STATE OF TENNESSEE)
)
COUNTY OF GILES)

I, JOE FOWLKES, being first duly sworn according to law, do hereby state as follows:

1. I am an adult citizen and resident of the State of Tennessee. I serve as a Representative in the General Assembly. I sponsored the statute which implemented the recommendations of the Adoption Study Commission in the House of Representatives. In this capacity, I have accumulated certain of the documents presented in hearings before various committees of the General Assembly. I have also reviewed the logs of audio tapes of various committee hearings.

2. Attached as Collective Exhibit A are the logs of the audio tapes of hearings before various committees of the Tennessee General Assembly in connection with amendments to the adoption laws of Tennessee.

3. Attached as Collective Exhibit B are certain documents submitted to various committees of the Tennessee General Assembly in connection with amendments to the adoption laws of Tennessee.

4. Attached as Exhibit C is a summary of the activities of the commission to study the adoption laws of Tennessee, on which the undersigned served, and a summary of the legislative history of the amended adoption law.

/s/ Rep. Joe Fowlkes

Sworn to and subscribed before me this 23rd day of July, 1996.

/s/ Notary Public

EXHIBIT C

Legislative History

A. Activities of the Adoption Commission

The Commission to Study the Adoption Laws of the State of Tennessee (hereinafter the "Adoption Commission") was appointed according to Senate Joint Resolution N° 17 (a copy of which is attached to this Exhibit) to include two members of the Senate (including Senator Jim Holcomb, in 1994), two members of the House of Representatives (including the affiant), one member of the bench who regularly presides over adoption matters, one member of the bar who practices regularly in the adoption field (Robert D. Tuke, Esq.), one person who is a representative of a licensed, child-placing agency, one person who is a representative of an adoption advocacy group, one adopted person (Ms. Caprice East), one person who placed a child for adoption, and the Commissioner of the Department of Human Services or the Commissioner's designee.

The Adoption Commission began its work with a preliminary meeting on August 20, 1993, in Nashville. Thereafter, meetings occurred on October 4-5, 1993 in Nashville; October 27-28, 1993 in Jackson; November 9-10, 1993 in Knoxville; and November 30–December 1, 1993 in Columbia. In addition, the Commission met December 20-21, 1993 in Johnson City, at the request of residents of Upper East Tennessee to have access to the Adoption Commission to testify.

At the meetings in Jackson, Knoxville, Columbia and Johnson City, the Adoption Commission heard from

hundreds of persons wishing to present testimony regarding Tennessee's adoption laws. In addition, the Adoption Commission received dozens of letters and other correspondence from citizens of Tennessee and elsewhere regarding their personal experiences and views. The vast majority of the testimony and correspondence received by the Adoption Commission focused on the issue of access to adoption records.

Scores of the persons testifying and of persons presenting documentary evidence expressed their frustration in being denied access to their adoption records. The evidence overwhelmingly indicates that the current law had served to deny access to often critical information to those persons most in need of having it. The evidence also reflected a pattern of inconsistent response, uncertainty, and contradiction in policy and procedure by the Department of Human Services and in many cases the courts.

During 1994, the Adoption Commission met on several additional occasions. At its meeting on January 10, 1994, the Adoption Commission heard from Mrs. Vallie Miller, who had been the State Supervisor of Adoptions during the investigation of the Tennessee Children's Home Society, the enacting of legislation which sealed adoption records as a result thereof, and for approximately 30 years thereafter. In her testimony, Mrs. Miller testified that she authorized and was aware of no promise of confidentiality to biological parents following the 1951 legislation. (*See* testimony of Mrs. Vallie Miller filed with this court.)

At its meetings in 1994 and 1995, the Adoption Commission discussed and debated at length the manner in which Tennessee's adoption laws should be amended. Much of its attention was devoted to the issue of access to records. The Commission determined to attempt a balance between the interests of biological parents in their privacy with the interest of adoptive persons to have access to their own records. The Commission divided those persons affected into three groups: pre-March 1951; post-March 1951 through the present; and persons affected in the future. The Adoption Commission carefully discussed the interests of biological parents, adoptees and adopted parents in each of the three groups. Following these considerations, the Adoption Commission determined to recommend to the General Assembly legislation which would include a concept based upon the Contact Veto Registry legislation of New South Wales, Australia. The Adoption Commission also determined to recommend to the General Assembly a completely redrafted Adoption Code incorporating a Contact Veto Concept. The Chairman of the Adoption Commission appointed a drafting committee consisting of William G. Russell, General Counsel for the Department of Human Services, and Robert D. Tuke. The drafting committee made its first report to the Adoption Commission on August 2, 1994 and continued to report thereafter until its final draft legislation was submitted.

The Adoption Commission met on January 25, 1995 to consider the recommended legislation prepared by the drafting committee, and following several hours of

discussion, the Adoption Commission voted to recommend to the General Assembly by a vote of 11 affirmative votes and one pass (by Senator Douglas Henry, who opposed access to records by those persons adopted after March 1951 to the present). The report to the General Assembly is a part of the record of the Adoption Commission and the General Assembly.

B. Legislative History in the General Assembly

The proposed legislation from the Adoption Commission was introduced in the Senate by Senator Holcomb and in the House by the affiant. The legislation was introduced as Senate Bill Number 653 and House Bill Number 406. Both Bills had multiple co-sponsors, with Senator Holcomb and the affiant being the principal sponsors. The Bills were debated in the Senate before the Judiciary Committee, and the Finance, Ways and Means Committee. In the House, it was debated before the Judiciary Committee and the Finance, Ways and Means Committee. It also was debated in various sub-committees of both Houses. The Bill was subject to fiscal review and ultimately sent to the floor of each chamber for a vote. House Bill Number 406 was passed by the House of Representatives by a vote of 99 to 0, and Senate Bill Number 653 was passed by the Senate by a vote of 30 to 2. Both Bills were debated on the floors of their respective Houses and amended before passage.

Following an error in the engrossing process, a Joint Ad-Hoc Committee was appointed by the House and Senate to further study the law as passed and to resolve

the problems arising from the engrossing error. The Joint Ad-Hoc Committee met on August 23 and August 24, 1995. During those meetings, the issues of privacy rights and access to records were again debated, with testimony being offered by a representative of the National Council for Adoption, of which Plaintiff Small World Ministries, is a member. Members of the Adoption Commission also testified before the Joint Ad-Hoc Committee, including Robert D. Tuke and Caprice East.

The effective dates of the legislation with respect to persons adopted after March, 1951 had been postponed until July 1, 1996, to provide time for the Department of Human Services to develop rules and regulations and to publicize the existence of the Contact Veto Registry. The postponement also was intended to afford the General Assembly the opportunity to receive additional information and commentary on the new law as it affected access to adoption records. Such commentary was received and referred to the Joint Ad-Hoc Committee. In addition, the Adoption Commission met again on November 8, 1995 to receive and consider input from Crisis Pregnancy Centers and others regarding potential access to information intended to be kept confidential.

Following these meetings and based upon information received, amendments to the newly enacted adoption law were proposed to the General Assembly in 1996 in order to clarify access to records, to make it clear that home studies were not intended to be included in the sealed adoption records available for release, except

on court order, and to make certain that confidential records maintained by Crisis Pregnancy Centers, psychologists and other professionals would not be subject to release, except by court order. The amendments were offered as Senate Bill Number 2737 by Senator Holcomb and House Bill Number 2054 by Representative Kim McMillan. Additional amendments were offered by other Senators and Representatives, including House Bill Number 2927 introduced by Representative Carol Chumney with Senate Bill Number 3099 by Senator David Fowler, which would effectively have prohibited release of the sealed adoption records without the consent of the affected biological parent. Again, these Bills were fully debated in the appropriate Committees of both the House and the Senate, and ultimately Senate Bill 2737 sponsored by Senator Holcomb and Representative McMillan was passed overwhelmingly by both Houses and became law when signed by the Governor on May 15, 1996, as Public Chapter N° 1054. Representative Chumney's and Senator Fowler's Bill was amended to restrict the consent requirement to victims of rape or incest, and became law when signed by the Governor on May 15, 1996, as Public Chapter N° 1068.

APPENDIX 12.

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE

PROMISE DOE, KIMBERLY C. and RUSS C., and SMALL WORLD MINISTRIES, INC.,	)	
Plaintiffs,	)	Case No. 3-96-0599
v.	)	JUDGE NIXON
DONALD SUNDQUIST, Governor of the State of Tennessee, in his official capacity; CHARLES BURSON, Attorney General of the State of Tennessee, in his official capacity; and LINDA RUDOLPH, in her official capacity as the Commissioner of the Department of Human Services for the State of Tennessee,	)	DECLARATION OF LYNN GIDDENS
Defendants.	)	

STATE OF NORTH CAROLINA)
: ss.:
COUNTY OF ORANGE)

1. I live in Carrboro, a suburb of Chapel Hill, North Carolina. I am coordinator of the North Carolina Adoption Connection, an organization which,

among other things, helps adoptees find and contact their birth parents.

2. As coordinator, I personally communicate with the adoptees in all these searches. I and volunteers working with the North Carolina Adoption Connection help the adoptee locate the birth parent if we can, but we do not contact the birth parent ourselves. Instead I personally inform the adoptee of the birth parent's phone number. The adoptee then telephones the birth parent (usually immediately after my phone call to the adoptee) and then reports the result back to me, usually within an hour, but always within a day. None have failed to report back to me.

3. Since 1980, I have assisted in 634 searches conducted in this fashion, in which the birth parent was located and contacted by the adoptee. Out of that number, all but twelve birth parents welcomed contact from their children whom they had given up for adoption. In other words, 98% of birth parents who were contacted (most of whom lived in North Carolina) welcomed contact from the adoptees.

I declare under penalty of perjury that the foregoing is true and correct.

Executed September 5, 1996 /s/ Lynn Giddens

APPENDIX 13.

Seal

State of New Jersey
DEPARTMENT OF HUMAN SERVICES
DIVISION OF YOUTH AND FAMILY SERVICES
CN-717, Trenton, New Jersey 08625-0717

August 12, 1996

Mr. Frederick F. Greenman
Deutsch Klagsbrun & Blasband
800 3rd Avenue
New York, New York 10022-7604

Dear Mr. Greenman:

Thank you for your correspondence of August 6 and your interest in the Division of Youth and Family Services' Adoption Registry.

The Division of Youth and Family Services offers a variety of services to adult adoptees and birth family members who were served by the Division or its predecessor agencies. For example, we maintain a registry for adult adoptees and birth family members. In addition, staff can provide nonidentifying background and recorded medical information to adult adoptees, adoptive parents and birth family members.

We also provide limited search services on behalf of adult adoptees, only. Upon request, members of the

Registry staff will attempt to locate a birth parent or other birth family members on behalf of adult adoptees. We act as an intermediary between the parties, and if all concur, we provide adoptees with the information needed to make contact.

In October 1992, our office began keeping automated records of the results of such searches. As per July 31, 1996, the results are as follows:

- Registry staff successfully located 336 birth parents, siblings or other birth relatives of adult adoptees; of that number, 16 of those located were deceased.
- Among the remaining 350 located birth family members:
  - 321 accepted personal contact from adult adoptees;
  - 11 agreed to mail contact only;
  - 18 (5.1 percent) refused all contact.

Please feel free to contact me if you have further questions or need additional information. You can reach me at 609-292-8816, between 9AM–4PM, Monday through Friday. Best wishes.

Fraternally,

/s/ Gerald R. Gioglio
Adoption Registry Coordinator

c Dr. John Sonne

APPENDIX 14.

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE

PROMISE DOE, KIMBERLY C. and RUSS C., and SMALL WORLD MINISTRIES, INC.,	
Plaintiffs,	
v.	Case No. 3-96-0599
DONALD SUNDQUIST, Governor of the State of Tennessee, in his official capacity; CHARLES BURSON, Attorney General of the State of Tennessee, in his official capacity; and LINDA RUDOLPH, in her official capacity as the Commissioner of the Department of Human Services for the State of Tennessee,	JUDGE NIXON AFFIDAVIT OF MARIANNE D. GLAD
Defendants.	

STATE OF TENNESSEE)
: ss.:
COUNTY OF SHELBY)

MARIANNE D. GLAD, being duly sworn, states:

1. I am the President and one of the founders of Tennessee's The Right to Know, an unincorporated

association which, among other things, helps birth parents and adoptees find each other.

2. In late 1978, Tennessee's The Right to Know began keeping count of the results of adoptees' searches for their birth families in which our help was requested. Since that time, our records show that approximately 1169 adoptees have reported contacting their birth parents or other members of their birth families. Out of that number, only four have reported that their birth parents or other members of their birth families have refused initial or further contact.

/s/ Marianne D. Glad

Sworn to and subscribed before me
this 10th day of August, 1996.

/s/ Notary Public

APPENDIX 15.

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
AT NASHVILLE

PROMISE DOE, KIMBERLY C. and RUSS C., and SMALL WORLD MINISTRIES, INC.,	)	
Plaintiffs,	)	
v.	)	No. 3-96-0599
	)	JUDGE NIXON
DONALD SUNDQUIST, Governor of the State of Tennessee, in his official capacity; CHARLES BURSON, Attorney General of the State of Tennessee, in his official capacity; and LINDA RUDOLPH, in her official capacity as the Commissioner of the Department of Human Services for the State of Tennessee,	)	
Defendants.	)	

AFFIDAVIT

STATE OF TENNESSEE)
)
COUNTY OF SHELBY)

I, ELLEN RARDIN, being first duly sworn according to law, do hereby depose and state as follows:

1. I am an adult citizen and a resident of Tennessee. I have been a licensed clinical social worker ("LCSW") for sixteen years, and am licensed by the states of Tennessee and Arkansas in social work. I have operated a licensed child placing agency called Adoption Counseling Services for the past four and a half years. I have devoted most of my sixteen years in social work to adoption counseling and facilitation. As an adoption counsellor, I prepare home studies, counsel birth parents, and teach workshops and classes for adoptive parents and professionals. I also contract with private adoption agencies to perform these services.

2. I have worked extensively with women dealing with unplanned pregnancies. Of the ones who chose to give birth to the children and place them for adoption, a large number tell me that they would never consider adoption if they were going to be denied knowledge of their child's health and well-being. Though many birth parents would probably require a period of adjustment if contacted by an adult child they had given up for adoption, my experience is that an overwhelming number of them are glad for the contact once they do have this period of adjustment. Furthermore, that most adoptees would not contact their birth parents if the birth parents did not want to be contacted.

3. I have also worked extensively with adult adoptees who are struggling with their identities. Being able to access their adoption records and original birth

certificates has been extremely therapeutic. All have been sensitive to their birth parents' possible feelings.

4. It is my hope, as an adoption counselor and advocate, that every person who was raised by anyone other than their biological parents will know their heritage and history, and that the information most of us take for granted will not be denied to those who had no voice when an adoption choice was made for them.

/s/ Ellen Rardin, LCSW

Sworn to and subscribed before me this 16th day of July, 1996.

/s/ Notary Public

APPENDIX 16.

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
AT NASHVILLE

PROMISE DOE, KIMBERLY C. and RUSS C., and SMALL WORLD MINISTRIES, INC.,	)	
Plaintiffs,	)	
v.	)	No. 3-96-0599 JUDGE NIXON
DONALD SUNDQUIST, Governor of the State of Tennessee, in his official capacity; CHARLES BURSON, Attorney General of the State of Tennessee, in his official capacity; and LINDA RUDOLPH, in her official capacity as the Commissioner of the Department of Human Services for the State of Tennessee,	)	
Defendants.	)	

AFFIDAVIT

STATE OF TENNESSEE)
)
COUNTY OF DAVIDSON)

I, DEBORAH ROBINSON, being first duly sworn according to law, do hereby depose and state as follows:

1. I am an adult citizen and a resident of Tennessee. I have a Masters in Counseling and have worked extensively with pregnancy clients, adoptive parents and adoptees. I am the Director of Miriam's Promise, a Methodist non-profit licensed child placing agency in Nashville, Tennessee. Our agency was formerly known as Tennessee Conference of Child Service. Our agency provides counseling services to approximately 85 pregnancy clients a year. Of those clients, approximately 40% choose adoption and the remaining 60% choose to parent.

2. I have worked extensively with young women and young women facing unplanned pregnancies. Of those clients choosing adoption for their children, my experience has been that a large number would never consider adoption if they were going to be denied knowledge of their child's well-being. In observing changing adoption practices, I have seen that the increase in truthfulness and openness between triad members has served to strengthen adoption practices, to promote healing for all parties as well as leading to more adoptions.

3. It is my observation that there is no direct connection between the later access to records and the decision to carry a pregnancy to term. It has been my experience that the decision to place a child for adoption is made after the decision to continue the pregnancy. The two decisions are very separate. I have never worked with a birthmother who chose abortion upon

learning about openness in adoption, but I have worked with birthmothers who planned to have an abortion but chose adoption instead after learning of their right to choose the style of adoption best suited to them.

4. I have also worked with adult adoptees who have sought counseling in coming to terms with their heritage and identity. It has been my experience that information about their birth heritage is extremely therapeutic. The adult adoptees with whom I have worked have been very sensitive to the needs and emotions of their birth parents. Many adoptees seek only information not contact.

5. It is my hope as an adoption counselor and advocate, that every adopted person or anyone who was raised by someone other than a biological parent will know their birth heritage and history. The information belongs to them just as birth information belongs to those of us who were not adopted.

/s/ Deborah Robinson, MA

Sworn to and subscribed before me this 17th day of July, 1996.

/s/ Notary Public

APPENDIX 17.

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE

PROMISE DOE, KIMBERLY C. and RUSS C., and SMALL WORLD MINISTRIES, INC., Plaintiffs, v. DONALD SUNDQUIST, Governor of the State of Tennessee, in his official capacity; CHARLES BURSON, Attorney General of the State of Tennessee, in his official capacity; and LINDA RUDOLPH, in her official capacity as the Commissioner of the Department of Human Services for the State of Tennessee, Defendants.	Case No. 3-96-0599 JUDGE NIXON DECLARATION OF TORIN SCOTT

STATE OF ARIZONA)
: ss.:
COUNTY OF MARICOPA)

1. I have been the Supervisor of the Confidential Intermediary Program of the Arizona Supreme Court, pursuant to Section 8-134 of the Arizona Revised Statutes, since 1993. As Supervisor, I supervise the

training and certification of court-appointed confidential intermediaries and monitor their work.

2. Adoption records in Arizona are sealed. If an adoptee wishes to find his or her birth parents, he or she contacts the Supreme Court, chooses a confidential intermediary from a list maintained by the Court, and asks the confidential intermediary to act for him or her. If the confidential intermediary accepts, he or she is appointed by the Court and the confidential intermediary then attempts to locate and contact the birth parent. If the confidential intermediary is successful in locating and contacting the birth parent, the birth parent is asked if she or he consents to the release of identifying information, of only non-identifying information or of no information at all to the adoptee. The confidential intermediary then carries out the birth parent's instructions and reports back to the Court.

3. The records of the Confidential Intermediary Program, which are maintained under my supervision, reveal that since the program started in 1993, 188 birth parents have been contacted by confidential intermediaries. Of that number, 138 or 73.4% have consented to the release of identifying information, 19 or 10.1% have consented to the release of only non-identifying information, and 31 or 16.5% have not consented to the release of any information, upon the initial contact.

4. Some of those birth parents who initially refuse to release identifying information later change their minds and release such information through an adoption

agency with which the confidential intermediary is affiliated. While I am aware that this occurs, my office does not maintain records on such later releases, and I can not say exactly how often it occurs.

I declare under penalty of perjury that the foregoing is true and correct.

Executed September 5, 1996 /s/ Torin Scott